IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3470 of 1992

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BABUPRASAD RAMDAYAL & 10 - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR CG SHARMA for Petitioners
MR ND GOHIL, AGP for Respondents

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 10/11/2006

ORAL JUDGMENT

1. The petitioner is a Public Charitable Trust, registered under the provisions of the Bombay Public Trust Act. After coming into force of the

Urban Land [Ceiling & Regulation] Act, 1976, they had filed their statement under Section 6[1] of the Act. It was stated by them that they were possessed of plot no. 187[Part] admeasuring 2060 sq. mts., but also submitted that on an application by them, the government had granted them exemption-cum-permission under Section 20 of the Act to sell the property to a third party. They also stated that plot no.56 [Part]/sub-plot no.1 admeasuring 3692 sq.mts. was also in their possession, the same was purchased somewhere between 1972 and 1975, much before the appointed date and as the transaction was bona fide transaction for value and as the property was needed by the Trust for its charitable religious and other purposes and as they were in possession of the property, it could not be declared as surplus. Competent Authority issued a draft statement in 1976 and made final order holding that the area of 4752 sq.yds. was in excess of entitlement of the petitioner-trust. Being aggrieved by the said order, the petitioners took up the matter in

appeal to the Tribunal in Appeal Case No. 144/89. In the appeal memo, specific ground was raised that exemption was granted under Section 20 and the Trust, being Public Charitable Trust, was entitled to hold the land beyond the ceiling limit under Section 19[1][iv] of the Act if land was required and used for any public, charitable or religious purpose. The Tribunal, by its order dated 26th November, 1990 accepted the contention of the petitioners and held that in view of the permission/exemption granted by the State under Section 20[1][b] of the Act, the said land could not be treated to be in excess of the ceiling limit. Without considering the effect and impact of Section 19[1][iv] of the Act, it observed that as the entitlement of the Trust was 1000 sq.mts. only, rest of the land, that is, 2692 sq.mts. would be in excess, it accordingly partly allowed the appeal.

2. Being aggrieved by the order passed by the Tribunal, the petitioner Trust is before this Court.

3. Shri C.G. Sharma, learned counsel for the

petitioners submitted that the Tribunal was absolutely unjustified in not appreciating the question relating to applicability of Section 19[1][iv] and the entitlement of the petitioners on the petitioners' plea that they are registered Public Charitable Trust and the land in their possession could not be declared to be surplus if the land is required and used for any public charitable or religious purpose. His submission is that from the facts, it would clearly appear that on one side, the government was granting exemption to the petitioner under Section 20[1][b] of the Act to dispose of the land, but at the same time, the Tribunal was not taking into consideration the effect of Section 19[1][iv]. He submits that the petition be allowed and the order passed by the Competent Authority and the Tribunal be quashed and it be held that the petitioner is not in possession of any excess land.

4. Shri N.D. Gohil, learned AGP for the respondents, on the other hand, submits that the petitioners did not seriously press the ground

available to them under Section 19[1][iv] and under the circumstances, the Tribunal was justified in not considering that aspect of the matter. He, however, submits that the said question, if is considered to be germane, then, this Court should remand the matter back to the Tribunal for recording a finding that the petitioner Trust was requiring and using the land in dispute admeasuring 3692 sq.mts., for public charitable or religious purpose.

5. From Annexure:B of the appeal memo, it would clearly appear that under ground no.5 and ground no.9 of challenge, the petitioners had clearly stated that the petitioner is a Public Charitable Trust and it is competent to hold the land. In ground no.9, it was clearly mentioned that in accordance with Clause-19 of the Trust Deed, they are entitled to hold the land and they would also be entitled to exemption. If these two material grounds were raised by the petitioners before the Tribunal, then, it cannot be said that the Tribunal was justified in not considering that part of the

argument.

6. Section 19 of the Act says that the provisions of Chapter-III would not apply to certain vacant lands. Sub-section [1] of Section 19 provides that subject to provisions of sub-section [2], nothing in Chapter-III shall apply to any vacant land held by__ xxx xxx xxx [iv] any public charitable or religious trust [including *wakf*] and required and used for any public charitable or religious purposes.

7. The petitioner says that the petitioner Maheshwari Seva Samiti Trust is duly constituted under the provisions of the Bombay Public Trust Act and if the said statement is not denied by the respondent Trust or anyone else, then, it is to be taken to be correct. Under the circumstances, I must hold that the petitioner is a Public Charitable Trust duly registered under the provisions of the Bombay Public Trust Act.

8. Ordinarily, in view of the submissions made by the petitioners and not disputed by the respondents, I could have proceeded to decide

the matter on merits so far as it relates to exemption and non-application of Chapter-III for purposes of Section 19[1][iv], but instead, I would prefer to remand the matter back to the learned appellate authority [whosoever it is] for recording a finding. It is further made clear that the findings relating to exemption under Section 20 are not being disturbed by this Court and those findings shall not be open for consideration before the appellate authority.

9. The appellate authority, after giving opportunity of hearing to the parties, shall decide that whether the land in dispute was required and used by the petitioner for any public charitable or religious purposes and if yes, whether the provisions contained in Chapter-III of the Urban Land (Ceiling & Regulation] Act, 1976 would be applicable or not. Let a copy of this order be sent to the concerned appellate authority, that is, Special Secretary [Appeals], Polytechnic Compound, Ambawadi, Ahmedabad. After receiving copy of this order, the Special Secretary [Appeals]

shall issue notice to the parties giving them an opportunity of hearing and shall decide the matter in accordance with law and the observations made hereunder.

10. The Competent Authority shall try to dispose of the matter within a period of four months from the date of appearance of the parties. The authority shall also be obliged to inquire into the fact and record a finding that whether the petitioner Trust continues to be in actual physical possession of the property or it has already been dispossessed from the property as asserted by the respondents, because, in case the petitioner continues to be in physical possession of the property in dispute, then, on Repeal of the Act, the proceedings shall abate, but in case it is not found to be in possession and final order is made in favour of the petitioner, then, possession will have to be restored back.

11. The petition stands disposed of. Rule is discharged accordingly. No costs.

[R.S. GARG, J.]

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